

WILLIAM THREE IRONS,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 91-6-A
ACTING ASSISTANT SECRETARY -	:	
INDIAN AFFAIRS,	:	
Appellee	:	October 29, 1990

On October 26, 1990, the Board of Indian Appeals (Board) received a notice of appeal from William Three Irons (appellant), pro se. Appellant seeks review of a September 7, 1990, memorandum from the Acting Assistant Secretary - Indian Affairs to the Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), in which the Acting Assistant Secretary declined to waive 25 CFR 256.4(d)(1). Section 256.4(d)(1) provides in pertinent part: "The Housing Improvement Program will provide the financing of the construction of new standard housing." The Area Director sought a waiver of this regulation in order to provide appellant with a mobile home rather than an on-site constructed house.

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed.

Waiver of BIA regulations is permitted under 25 CFR 1.2, which states:

The regulations in Chapter I of Title 25 of the Code of Federal Regulations are of general application. Notwithstanding any limitations contained in the regulations of this Chapter, the Secretary retains the power to waive or make exceptions to his regulations as found in Chapter I of title 25 CFR in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians.

The determination of whether a waiver or exception is in the best interest of the Indians is a determination requiring the exercise of discretion. Simmons v. Deputy Assistant Secretary - Indian Affairs (Operations), 14 IBIA 243 (1986). In the present case, that determination required a balancing of the merits of constructing a house with the lower cost but shorter life of a mobile home. The Board does not have authority to review the Acting Assistant Secretary's exercise of discretion in this matter. 43 CFR 4.330(b)(2) states that "[e]xcept as otherwise permitted by the Secretary or the Assistant Secretary - Indian Affairs by special delegation or request, the Board shall not adjudicate: * * * Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority."

Furthermore, decisions of the Acting Assistant Secretary are equivalent to decisions rendered by the Assistant Secretary. Ute Mountain Ute Tribe v. Acting Assistant Secretary for Indian Affairs, 11 IBIA 168 (1983). The Assistant Secretary's decisions are final for the Department of the Interior unless he provides otherwise in the decision. 25 CFR 2.6(c), 2.20(c). The Acting Assistant Secretary did not provide for Board review of his decision in this matter. The Board thus has no authority to review it.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Assistant Secretary's September 7, 1990, decision is dismissed for lack of jurisdiction.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge